

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA

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CRIMINAL DOCKET NO. 08-175

v.

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SECTION: "L"

BYRON ORLANDO SMITH

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FACTUAL BASIS

The above-named defendant **BYRON ORLANDO SMITH**, has agreed to plead guilty as charged to Counts One, Five, and Six of the Indictment now pending against him. Should this matter have proceeded to trial, the United States of America would have proven beyond a reasonable doubt, through the introduction of relevant, competent, and admissible testimonial, physical and demonstrative evidence, the following facts to support the allegation against the defendant, **BYRON ORLANDO SMITH** ("SMITH"):

Unless stated otherwise, all of the facts set forth herein occurred within the Eastern District of Louisiana.

On January 30, 2008, a reliable informant informed Det. Dan Malo of the New Orleans Police Department that a person known as "BeeBop," later identified as **BYRON ORLANDO SMITH**, was selling drugs from 1813 North Robertson and from out of his gold Monte Carlo,

bearing Louisiana license plate REC 579. To confirm the information, officers drove to the location, where they observed the Monte Carlo parked in front of the residence.

On January 31, 2008, officers initiated surveillance on **SMITH's** residence at 1813 North Robertson. Det. Malo observed **SMITH** talk to several individuals that had approached on foot as they walked to 1813 North Robertson. At one point, **SMITH** and another individual spoke and walked down North Robertson and turned on St. Anthony toward Claiborne. Dets. Demetrius Jackson and Wayne Jacque then conducted a stop of the two for identification purposes. They were able to confirm **SMITH's** identity and address.

On February 1, 2008, Det. Malo continued his surveillance of the residence. **SMITH** was standing on the front porch. **SMITH** spoke to an unknown female. The female gave **SMITH** currency. **SMITH** took the currency and walked to the Monte Carlo and retrieved an object from inside. **SMITH** then walked to the female and handed her the object. The female then left the area.

SMITH was then seen speaking to an unknown male. The male approached on foot and handed **SMITH** currency. **SMITH** then walked to the Monte Carlo and retrieved an object from inside. **SMITH** then handed the object to the male. The male then left the area.

This sequence of events happened several times during the surveillance. On some occasions, **SMITH** would walk inside the residence after obtaining the currency from the person, stay inside for about 30 seconds, walk outside, and then motion the person to walk to the side of the residence's porch. **SMITH**, from the porch, would then hand the person an object. The person would then walk away from the residence and out of the area.

On one occasion, a black male wearing a blue jacket and blue hat walked to the residence

and began to speak with **SMITH**. The male remained on the porch. **SMITH** walked into the residence. About 5 minutes later, **SMITH** and an unknown female exited the residence. They entered the Monte Carlo and drove away.

While they were gone, a red taxi cab pulled up at the corner of Pauger and North Robertson. CRYSTAL FRANCIS exited the taxi and walked toward the residence. She began speaking to the black male on the porch, who was shaking his head. FRANCIS then returned to the taxi and waited.

SMITH arrived back at the location a short time later. **SMITH** went up to the residence and began speaking with the black male. FRANCIS then exited the taxi and approached **SMITH**. **SMITH** and FRANCIS then walked inside the residence. FRANCIS walked out about five minutes later, re-entered the taxi, and left the area.

Dets. Monteleone, Jackson, and Jacque, along with Sgt. Barbe stopped the taxi at St. Bernard and Claiborne. Inside the taxi were passengers FRANCIS and two children. Officers Mirandized FRANCIS. FRANCIS was clutching an object in her right hand as she spoke. FRANCIS eventually opened up her hand at which time a clear plastic bag containing crack fell to the ground. Officers arrested FRANCIS, and took her and her children to the Crime Abatement Team office. FRANCIS stated that she had purchased the crack from **SMITH**, who was her cousin **BYRON SMITH**, who lived at the location. FRANCIS said she was in fear of her and her children's lives, explaining that if **SMITH** saw her in jail after he was arrested, he would suspect her. Police then agreed to release her at that time and put out an arrest warrant for her to be executed at another time.

Back at the residence, Det. Malo continued his surveillance. He observed **SMITH** speak

with ANTHONY MARTIN, who had approached the residence. MARTIN handed **SMITH** money. **SMITH** walked inside the residence for about one minute, came back outside, motioned for MARTIN to walk to the side of the porch, and handed him an object. Afterwards, **SMITH** and MARTIN continued to talk in front of the residence.

The other detectives returned to the scene. They stopped **SMITH** and MARTIN in front of the residence. Officers found MARTIN to be in possession of two clear plastic bags of marijuana, and one piece of crack. Both were Mirandized. Det. Malo then obtained a search warrant for **SMITH's** residence from Magistrate Commissioner Rudy Gorrell. Detectives secured the residence and found three children inside.

Detectives executed the warrant. Officers found a large metal pot under the bed in the front bedroom containing a black garbage bag with \$4,000.00 in currency, as well as two plastic bags full of a large amount of marijuana, one small plastic bag with marijuana, one clear plastic bag with 10 individually wrapped pieces of crack, one plastic bag with three individually wrapped pieces of crack, one small plastic bag of powder cocaine, one plastic bag with crack cocaine, and one plastic bag with four large pieces of powder cocaine. Detectives also found a Berretta .9mm pistol with an extended magazine in the down stairs closet, next to the bedroom with the narcotics, as well as one .22 caliber pistol in the upstairs closet. Officers also found many objects associated with distribution in the kitchen and bedroom. **SMITH** had \$350.00 in his possession.

SMITH later informed officers that he had bought the 9mm Berretta from a "crack head" about six to seven months earlier for \$100.00. He stated that he kept it unloaded and stored on the top shelf of his bedroom closet, although he admitted to shooting it on New Year's Eve. He

also stated that he had exchanged four other guns for crack in the past.

The firearms recovered in this matter were manufactured outside of the State of Louisiana and, therefore, affected interstate commerce by crossing into Louisiana.

SMITH was previously convicted on December 1, 1994, in the Twenty-Fourth Judicial District Court for the Parish of Jefferson, State of Louisiana, for possession of cocaine in violation of La. Rev. Stat. 40:967(C)(2). This offense was a felony offense punishable by imprisonment for a term exceeding one year.

All drug evidence obtained in this matter was analyzed by the New Orleans Police Department's Scientific Criminal Investigations Division. The items were tested by Criminalist Nhon Hoang between February 16, 2008, and February 20, 2008. The crack recovered from **FRANCIS** tested positive for cocaine base and had a net weight of 0.9 grams. The crack recovered from **MARTIN** tested positive for cocaine base and had a net weight of 0.07 grams. The two bags of marijuana recovered from **MARTIN** tested positive for marijuana and had a net weight of 27.7 grams. Inside **SMITH'S** residence, the recovered crack tested positive for cocaine base and had a total net weight of 76.7 grams. The powder cocaine recovered inside of **SMITH's** residence tested positive for cocaine hydrochloride and had a total net weight of 253.3

grams. The marijuana recovered inside of **SMITH's** residence tested positive for marijuana and had a total net weight of 732.16 grams.

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Assistant United States Attorney

BYRON O. SMITH
Defendant

MILTON P. MASINTER
Attorney for Defendant